



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

KERI BROWN, an individual,

Plaintiff,

v.

AMERICAN COMMERCE INSURANCE
COMPANY, an Ohio Insurance Company,

Defendant.

CJ-2012 02455

Case No.:

Judge:

**DISTRICT COURT
FILED**

LINDA G. MORRISSEY MAY 10 2012

PLAINTIFF'S FIRST PETITION

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

COMES NOW, the Plaintiff and for her claim against the Defendant American Commerce Insurance Company (hereinafter "Defendant ACIC") would show the court as follows:

1. On or about April, 13, 2009, Plaintiff Keri Brown (hereinafter "Plaintiff") was driving a 1994 Toyota Camry southbound on Elwood approaching 138th Street in Glenpool, Tulsa County, Oklahoma.

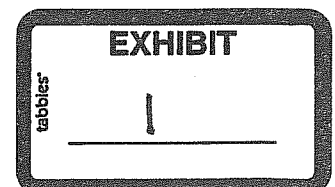
2. On or about April, 13, 2009, Angela Davis (hereinafter "Tortfeasor") was operating a 2002 Oldsmobile traveling northbound on Elwood approaching 138th Street crossing the centerline into oncoming traffic colliding with the vehicle operated by the Plaintiff.

3. The Tortfeasor's negligence was the sole and proximate cause of the collision.

4. The liability carrier for the Tortfeasor has tendered liability limits of \$25,000.00.

5. Plaintiff's claim exceeds the applicable \$25,000.00 liability limits available to the Tortfeasor.

6. Defendant ACIC is an Ohio insurance company and issued an insurance policy to Virgil and Twyla Jones, specifically policy number 11-002783916 (injury claim number 590212), which includes \$50,000.00 in uninsured/underinsured motorist ("UM/UIM") coverage. See Exhibit "A" attached hereto.



7. Said UM/UIM policy was in full force and effect on April, 13, 2009. See Exhibit "A" attached hereto.

8. Under the UM/UIM policy, Virgil and Twyla Jones are named as the insured. Plaintiff is an insured by way of being a resident relative of named insureds Virgil and Twyla Jones.

9. The Tortfeasor did not have enough Liability coverage to fully compensate the Plaintiff Keri Brown for her injuries.

10. The Tortfeasor is an underinsured motorist.

11. Pursuant to the UM/UIM policy with the Defendant ACIC the UM/UIM coverage applies.

12. The UM/UIM policy covers damages sustained by the Plaintiff as a result of this collision.

13. Plaintiff is entitled to the proceeds of the applicable UM/UIM coverage provided by the Defendant ACIC.

14. On January 11, 2011, Defendant ACIC waived UM subrogation. See letter attached hereto as Exhibit "B".

15. On or about June 20, 2011, Defendant ACIC offered \$9,750.00 in UM proceeds over and above the \$25,000.00 liability limits of the Tortfeasor.

16. As a result of this collision, Plaintiff Keri Brown has suffered permanent personal injury to her body, physical pain and suffering, past and future, mental anguish, past and future, and has been forced to incur medical expenses, for total damages in the total amount of \$75,000.00.

17. Plaintiff Keri Brown is 32 years of age (DOB: 2/12/1979), and pursuant to the life expectancy chart attached hereto as Exhibit "C", Plaintiff Keri Brown has a life expectancy of 51.5 more years.

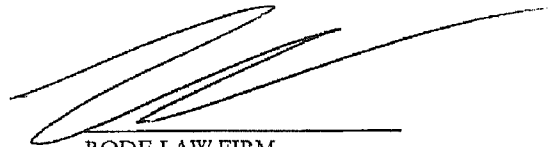
18. Defendant ACIC has failed to make a reasonable offer in connection with said UM/UIM policy.

19. Defendant ACIC refused to pay Plaintiff Keri Brown the value of her compensatory damages, thereby breaching its contract of insurance.

20. The Plaintiff is entitled to judgment against Defendant ACIC in the amount of her compensatory damages under said insurance policy, including attorney fees, and costs.

WHEREFORE, the Plaintiff prays that she be granted judgment against Defendant ACIC in the amount of \$75,000.00 (i.e., \$50,000.00 over and above the Tortfeasor's liability limits of \$25,000.00) together with costs, attorney fees, pre and post-judgment interest, and for such other and further relief as this Court deems just and equitable.

Respectfully submitted,



RODE LAW FIRM
Robert L. Rode, OBA# 14307
Jesse L. Fettkether, OBA# 21173
David C. Bean, OBA# 12556
Bodil M. Mills, OBA# 20095
400 S. Boston, Suite 500
Tulsa, OK 74103
(918) 599-8880
Fax: (918) 599-8863
ATTORNEYS FOR PETITIONER



The Commerce Group, Inc.

*American Commerce Insurance Company
Commerce West Insurance Company*

EASTERN CLAIMS OFFICE

11 Gore Road, Webster, MA 01570
Toll free (877) 372-9836

S-318 MV
RECEIVED

DEC 23 2010

~~RECEIVED BY FIRM~~

December 17, 2010

Rode Law Firm
400 South Boston Ste 500
Tulsa OK 74103-5004

RE: Insured: Virgil Tomes
File #: 590212
Date of Loss: 11/16/10
Your Client: Keri Brown

Dear Attorney Rode:

This letter is to acknowledge your representation of Keri Brown for the above captioned accident.

Please be advised that our insured carries underinsured coverage in the amount of \$50,000.00 per person \$100,000.00 per accident.

There is also \$5,000.00 in Med Pay benefits.

I do look forward to hearing from you and if you have any questions, please feel free to contact me at 1-877-372-9836, ext. 15514.

Sincerely,

AMERICAN COMMERCE INSURANCE COMPANY

Angela Lizewski, ACLA Adj. 743
Claim Specialist



1640

01-13-09



American Commerce Insurance Company
 Insuring AAA Members since 1948
 P.O. Box 182293
 Columbus, Ohio 43218-2293

Automobile Insurance Notice of Payment Due

INVOICE NUMBER 4383251

THIS NOTICE WAS PREPARED: 12/30/08

Policy Number 11 002783916
Payment Due IN COLS, OHIO BY:
 1/22/09

Policy Period 12:01 AM, 12/08/08 TO MIDNIGHT 6/08/09
 STANDARD TIME AT THE INSURED'S ADDRESS

Named Insured
 VIRGIL TOMES
 TWYLA TOMES
 535 W C ST
 JENKS OK 74037

Your Agent
 AAA OKLAHOMA (#099-099-149)
 10051 S. YALE SUITE 106
 TULSA, OK 74137

PHONE: 918-296-9603

Important Messages

THIS IS THE SECOND OF FOUR PAYMENTS DUE ON THE BUDGET PLAN YOU SELECTED AT YOUR 12/08/08 RENEWAL. YOUR POLICY PROVIDES COVERAGE FOR THE FOLLOWING VEHICLE(S)

1991 MERCEDES B 190E 2.3

2006 TOYOTA TUNDRA ACCESS CAB SR5

TOTAL POLICY PREMIUM	\$ 567.00
TOTAL TAXES AND SERVICE CHARGES	\$ 4.00*
TOTAL AMOUNT PAID TO DATE	\$ 141.75

TOTAL BALANCE DUE	\$ 429.25
MINIMUM AMOUNT DUE	\$ 145.75

* A \$ 4.00 SERVICE CHARGE APPLIES TO EACH PAYMENT UNDER YOUR BUDGET PLAN.

PLEASE PAY EITHER THE TOTAL BALANCE OR THE MINIMUM AMOUNT DUE. JUST A REMINDER...WE MUST RECEIVE YOUR PAYMENT IN OUR OFFICE BY THE PAYMENT DUE DATE SHOWN IN ORDER TO CONTINUE YOUR COVERAGE.

IF YOU PAY THE MINIMUM AMOUNT DUE, YOUR NEXT PAYMENT(S) WILL BE:

DUE ON	AMOUNT (EXCLUDING SERVICE CHARGES)
03/09/09	\$ 141.75
04/23/09	\$ 141.75

BDP-58 (9/95) American Commerce Insurance Company is represented exclusively by AAA Club Agencies.

INSURED COPY

LAST PAGE OF INVOICE

STATE OF OKLAHOMA - SECURITY VERIFICATION FORM

An authorized Oklahoma insurer has issued an ☒ Owner's/ ☐ Operator's Liability Insurance Policy pursuant to the Compulsory Insurance Law of Oklahoma to:

(NAMED INSURED)

VIRGIL TOMES
 TWYLA TOMES

Policy Number
 11 -002783916
 Effective Date
 12/08/08
 Expiration Date
 06/08/09

OFFICE ISSUING THIS FORM

American Commerce Insurance Company
 3590 Twin Creeks Drive, Columbus, Ohio 43204

Examine Policy exclusions carefully. This form does not constitute any part of your insurance policy. See "warning" on reverse side.

Applicable with respect to the following motor vehicle.

1991 MERZ 19DE
 YEAR MAKE/MODEL
 EDP-28

WDBDA28D7MF758274
 VEHICLE IDENTIFICATION NUMBER
 Not applicable to operator's liability insurance policy.

PFRE

U.S.A.

Corp.

At

1/11/2011 2:48:35 PM

Page 3



American Commerce Insurance CompanySM

Member of The Commerce Group, Inc.SM

Northeast Regional Claims Office

11 Gore Road, Webster, Massachusetts 01570-0758

(508) 949-5998 Toll Free (877) 372-9836 Fax (508) 949-9510

www.acilink.com

January 11, 2011

The Rhode Law Firm
400 South Mission Ste 103
Sapulpa, OK 74066

RE: Insured: Virgil Tomes
File #: 590212
Date of Loss: 04/13/09
Claimant: Keri Brown

Sent by Fax only: 918 248 4880

Dear Attorney Rhode:

As discussed, we agree to waive our subrogation rights for this loss.

Sincerely,

AMERICAN COMMERCE INSURANCE COMPANY

Angela Lizewski
Claims Specialist



Providing personal lines insurance since 1948
Received Time Jan. 11. 2011 1:47PM No. 3653

National Vital Statistics Reports, Vol. 54, No. 14, April 19, 2006

Table A. Expectation of life by age, race, and sex: United States, 2003

Age	All races			White			Black		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
0.....	77.5	74.8	80.1	78.0	75.3	80.5	72.7	69.0	76.1
1.....	77.0	74.3	79.6	77.4	74.8	79.9	72.7	69.1	76.0
5.....	73.1	70.4	75.7	73.5	70.9	76.0	68.9	65.3	72.2
10.....	68.2	65.5	70.7	68.5	66.0	71.0	63.9	60.3	67.2
15.....	63.2	60.6	65.8	63.6	61.0	66.1	59.0	55.4	62.3
20.....	58.4	55.8	60.9	58.8	56.3	61.2	54.2	50.7	57.4
25.....	53.7	51.2	56.0	54.1	51.6	56.3	49.6	46.3	52.6
30.....	48.9	46.5	51.2	49.3	46.9	51.5	45.0	41.8	47.8
35.....	44.2	41.9	46.4	44.5	42.2	46.6	40.4	37.3	43.1
40.....	39.5	37.3	41.6	39.8	37.6	41.9	36.0	32.9	38.6
45.....	35.0	32.8	37.0	35.2	33.1	37.2	31.6	28.7	34.1
50.....	30.6	28.5	32.4	30.8	28.8	32.6	27.6	24.8	29.9
55.....	26.3	24.4	28.0	26.5	24.6	28.1	23.8	21.2	25.9
60.....	22.2	20.4	23.8	22.3	20.6	23.8	20.2	17.9	22.1
65.....	18.4	16.8	19.8	18.5	16.9	19.8	17.0	14.9	18.5
70.....	14.9	13.5	16.0	14.9	13.5	16.0	14.0	12.1	15.3
75.....	11.8	10.5	12.6	11.7	10.5	12.6	11.4	9.8	12.4
80.....	9.0	8.0	9.6	9.0	8.0	9.6	9.2	7.9	9.8
85.....	6.8	6.0	7.2	6.7	5.9	7.1	7.4	6.4	7.8
90.....	5.0	4.4	5.2	4.9	4.3	5.1	5.7	5.0	6.0
95.....	3.6	3.2	3.7	3.5	3.1	3.6	4.4	3.8	4.5
100.....	2.6	2.3	2.6	2.5	2.2	2.5	3.4	3.0	3.4

